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**COMMENTS OF THE
AMERICAN ASSOCIATION OF PORT AUTHORITIES
BEFORE THE SURFACE TRANSPORTATION BOARD**

ENTERED
Office of the Secretary

MAY 16 2000

**STB Ex Parte No. 582 (Sub-No. 1)
Major Rail Consolidation Procedures**

**Part of
Public Record**

May 16, 2000

Background

The American Association of Port Authorities (AAPA), founded in 1912, is an association of 160 public port authorities in the United States and Canada, Latin America and the Caribbean. In addition, the association represents nearly 300 sustaining and associate members, firms and individuals with an interest in the seaports of the Western Hemisphere. These comments are filed on behalf of AAPA's United States delegation.

AAPA port members are public entities, divisions or agents of State and local government mandated by law to serve public purposes. We are public agencies charged with the responsibility to develop port facilities and to facilitate domestic and international commerce. U.S. public ports have invested billions of dollars of public funds to meet those responsibilities. Our members have an enormous financial stake in the future economic health of the U.S. railroads and the nation's intermodal transportation system. As a result, U.S. ports have a strong interest in any future rail consolidations and we appreciate the Board's decision to review its rail merger guidelines at this time.

Our Nation's Marine Transportation System

The United States has the most extensive, complex and decentralized marine transportation system (MTS) in the world. This infrastructure is critical to our commerce, international trade and national defense needs. Each component of the MTS — waterways, ports, and their intermodal connections — is a complex system within itself. However, even if the components function well individually, the maximum benefits are only achieved when they are effectively integrated. The system has been created through a successful partnership of federal, state, local and private interests, sharing ownership, management, and operation of the MTS.

A large measure of this country's unprecedented economic growth is due to the increased productivity of the American economy. Manufacturing industries in the U.S. increasingly rely on multinational production; retailers similarly source and sell globally. To further reduce costs, businesses keep inventories low and rely on just-in-time delivery of raw materials, partially assembled products, and finished goods, and they require freight transportation that is reliable, fast, inexpensive, and safe. In order to remain competitive in the global marketplace, U.S. businesses must have an efficient and reliable transportation system. Currently, ninety-five percent of our nation's trade by volume moves through our ports, and the total volume of domestic and international marine trade is expected to more than double in the next 20 years.

In addition, the MTS continues to play a very critical role in our nation's defense, particularly since the Coast Guard, Navy and other units of the Armed Forces depend on well-maintained U.S. ports and their intermodal connections as bases of operations. That role has never been more apparent than during the loadouts of military cargo and personnel during Operation Desert Shield/Desert Storm. The huge buildup of U.S. forces in and around the Persian Gulf would

have been impossible without the modern facilities and strong support provided by America's ports. According to the U.S. Military Traffic Management Command (MTMC), between August, 1990 and March 1991, MTMC loaded 312 vessels and more than 4.2 million measurement tons of cargo in 18 U.S. ports for delivery to the Persian Gulf in support of Desert Shield/Desert Storm.

The U.S. Public Port Industry

International trade has been the impetus for public investment in our nation's ports and related infrastructure, generating significant national economic benefits, as well as benefits to local and regional economies. In 1996 the port industry, port users and capital expenditures generated 11.7 million jobs nationwide, \$131 billion in federal taxes, \$440 billion in income, \$47 billion in state and local taxes, nearly \$1.4 trillion in sales, and \$666 billion to the GDP.

Because of changes in the Water Resources Development Act in 1986, port authorities must now shoulder a substantial burden of the cost of dredging projects formerly paid by the federal government. The enormous cost of providing terminal facilities, as well as cost-sharing navigation improvements, that serve not only port regions but the nation as a whole, must be paid for by public port agencies.

According to the United States Maritime Administration, public port authorities are investing capital in port development at record levels. In 1998, ports invested nearly \$1.4 billion in the development of facilities of commerce. The nation's ports project capital expenditures through 2003 at \$9.1 billion.

How Ports Are Affected by Rail Mergers

Like a pipeline, our nation's intermodal transportation system is only as efficient as its narrowest, most congested point, which is often the landside connection. No matter how much ports invest or how productive ports make their marine terminal facilities, our transportation system cannot operate to maximum efficiency unless cargo can move quickly, and cost effectively, in or out of ports. Of course, rail access is a key component.

Like shippers, ports derive great benefits from the competition resulting from access by multiple rail carriers. If a merger would result in reduced competition among rail carriers serving a port or reduce a port to a single provider, particularly a rail carrier that services a number of competing ports, rail service can be a make or break factor in determining whether a port can compete for cargo on the basis of price and service. This is true whether those competing ports are within the boundaries of the United States or, for example, across the Canadian border. As the advance notice of proposed rulemaking (ANPR) specifically noted, a number of individual U.S. ports have expressed concerns that the proposed BN-CN merger could result in cargo shifts to their Canadian competitors.

Comments on the Advanced Notice of Proposed Rulemaking

AAPA supports the Board's decision to eliminate the "one case at a time" rule and to examine the possible downstream effects of all future major rail merger proceedings, including the likely strategic responses by non-applicant carriers. We share the concerns raised by a number of parties during the March hearings that the merger guidelines must be reviewed with the goals of (1) enhancing, not just preserving competition, (2) avoiding service degradation and disruptions, and (3) preserving financial viability within the industry.

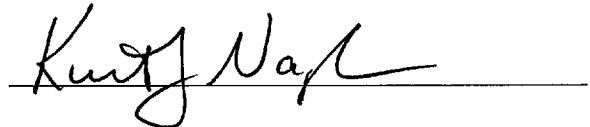
The ANPR specifically asks for comments on how the merger rules might be best revised to protect “customers and shortline railroads” from merger-related service disruptions and the loss of adequate infrastructure and capacity. We urge the Board to recognize that while a port served by a particular carrier may not immediately come to mind as that railroad’s “customer,” a port’s interest in a proposed merger is strikingly similar to that of an affected shipper. A port, having invested a significant amount of state or local funds in capital intensive, immobile facilities, can face serious adverse effects from reduced competition or service disruptions that can and have resulted from rail mergers. We urge the Board to amend its regulations to ensure that, at a minimum, a port with competitive rail service prior to a merger would retain effective competitive service and that railroads be prohibited from granting one port undue or unreasonable preferential treatment over other ports.

Given the current competitive environment, the limited number of rail carriers, and the distinct prospect of ending up with two transcontinental carriers if the merger wave continues, U.S. ports support the Board’s decision to review its merger guidelines at this time. AAPA believes that future merger considerations should place a greater focus on what is in the public interest. The impact of a proposed merger on affected ports should be a key factor, particularly since our U.S. ports are charged with protecting the public interest by creating jobs and promoting local and regional economies. We urge the Board to amend 49 C.F.R. 1180.1 (b)(1) (the regulation setting out factors in determining what is in the public interest) to require consideration of “the interests of affected ports and the communities they serve” since ports are not currently specified in that section.

Any proposed merger should be assessed against the current reality of a highly concentrated industry. AAPA believes that the following questions should be asked in any merger proceeding (many of which were suggested by the Port of Seattle in its comments in Docket 582):

- (1) Will service levels actually improve?
- (2) Will U.S. ports be able to compete with Canadian ports as they currently do (both West Coast and East Coast)?
- (3) Will the merged railroad have the same incentive to invest in infrastructure for efficiencies and capacity enhancements?
- (4) Will cargo be diverted from one port to another based on differential pricing?
- (5) Have the recent rail mergers resulted in the desired effect and created improved situations for shippers, ports and others that rely on the railroads?
- (6) Should the applicants be required to provide detailed financial information to the STB before it approves any voting trust that would allow the consolidation to go forward to financial conclusion?

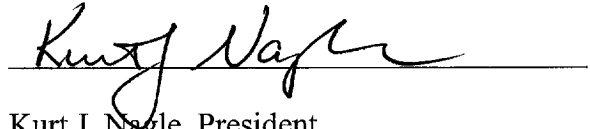
We appreciate the opportunity to share our views and look forward to working with the Board in this proceeding.



Kurt J. Nagle, President

Certificate of Service

I hereby certify that I have served a copy of these comments on all parties of record in Docket No. 582 (Sub-No. 1), Major Rail Consolidation Procedures, by first-class mail, postage prepaid, this 16th day of May, 2000.



Kurt J. Nagle, President